

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 16-4101 (DSD/SER)

Eddie Niles Hubbard

Petitioner,

v.

ORDER

Vicki Janssen,

Respondent.

Eddie Niles Hubbard, MCF-Faribault, OID# 244188, 1101 Linden Lane, Faribault, MN 55021, petitioner pro se.

Elizabeth Roosevelt Johnston, Hennepin County Attorney's Office, 300 South 6th Street, Suite C-2000, Minneapolis, MN 55487, counsel for respondent.

This matter is before the court upon the report and recommendation (R&R) of Magistrate Judge Steven E. Rau dated August 31, 2017. The magistrate judge recommended that the court (1) deny petitioner Eddie Niles Hubbard's petition for writ of habeas corpus, (2) dismiss the action with prejudice, and (3) deny a certificate of appealability.¹ No objections to the R&R have been filed in the time period permitted.² Under these circumstances,

¹ Hubbard has filed an amended petition for writ of habeas corpus. The court will not entertain this amended petition because it is untimely. See Fed. R. Civ. P. 15(a)(1). Further, because the court is denying the original petition, this amended petition is considered a second or successive petition. Therefore, pursuant to 28 U.S.C. 2254(b)(3), Hubbard must seek an order from the Eighth Circuit Court of Appeals authorizing the district court to consider the petition.

² Hubbard informed the court that he did not receive the R&R until September 9. Even accounting for this delay and giving him ample additional time, he still has not filed a timely objection.

the court finds it appropriate to adopt the R&R.

Accordingly, **IT IS HEREBY ORDERED** that:

1. The report and recommendation [ECF No. 19] is adopted in its entirety;
2. The petition for writ of habeas corpus [ECF No. 1] is denied with prejudice;
3. The amended petition for writ of habeas corpus [ECF No. 26] is denied without prejudice; and
4. No certificate of appealability shall issue.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: October 17, 2017

s/David S. Doty
David S. Doty, Judge
United States District Court